1944

File No O B R T /44

Legal Department

P.13 F

A BRANCH

Subject:-

Appeal under the Bombay Revenue Tribunal Act

File No. 1 B.R.T /44

Gen. 194 6.

96 A

Office of the R.L.A.

No appeal or revision application lies to Commissioner. See section 8 of the Bombay Revenue Tribunal Act, 1939. Since the Tribunal's powers of jurisdiction are not greater than Government's power prior to 1st April 1937 (section 4) Under Secretary, Revenue Department is right in holding that no appeal to the Tribunal will lie. It is only a revision application that can be made to the Tribunal. In Civil Courts the right to lodge an appeal is often a much more substantial right than the right to present a revision application. But the Tribunal appears to treat revision applications in much the same way as appeals. R.L.S. is not aware of any advantage that Government will gain by requesting the Tribunal to treat such cases as applications in revision. It therefore hardly seems worth while pursuing this matter before the Tribunal.

Sd/- 23-1-45

Remembrancer of Legal Affairs.

U.R. to R.D. No. 736, dt. 24th January 1945

D.C.

4 Copies

9-5-

No. 279

RETTEN

Office of the
Remembrancer of Legal Affairs.
Bombay Castle, 10th January 1945.

To

The Commissioner, Northern Division,
Ahmedabad.

Subject.- Appeal before the Bombay Revenue Tribunal filed by Fakirbhai Sarabhai Patel regarding alienation of S.No. 142 of Paldi, City Mahal, which is assigned for remuneration of a Jividar.

I have the honour to state that the case noted above has been referred by the Bombay Revenue Tribunal to the Remembrancer of Legal Affairs for his opinion in the matter. The main question involved is whether the grant comprises land or merely land revenue. On the point involved, the Land Alienation Register is weighty because of section 53 of the Land Revenue Code. It mentions "service tennure", the question is whether this means "grant of the soil". (Entries in Mutation Register and Village Form I all follow from the Service tennure" and have no separate significance). There are generally no sanads for "service tennure" (see paras. 95-96 at page 73 of Joglekar's Alienation Manual), and inany case there is none in this case. There can be raised some presumption that service tennure implies grant of land and that Resumption Rules would permit eviction. The presumption can be more easily drawn i it appeared that Jividars are not hereditary.

Inthis connection para. 6 of the Collector's letter at page 126 of file B.R.T. 794 and the portions sidelined red in the Commissioner's note at pages 154-156 are relevant. It is stated therein that Jividars are not hereditary and it is necessary to verify if this is correct. n thisconnection, you are requested to clarify the following.-

(1) Is any register of Jividars maintained under Part X of the Watan Act read with Part XI of that Act? (please see Form B at pages 192-193 of Khadnis's Watan Act, Fifth

S.C.

4 Copies 9-5-

Edition; the Mata register referred to by the Collector at page 126 has no relevance to the case of Jividars).

(ii) The Jividar's lands are classed as rams of Class VI in a column 4 of the Land Alienation Register (page 105 of the Collector's papers An extract from village Form III may be furnished to enable the Remembrancer of Legal Affairs to see whether the lands are classed as on-watandari.

(iii) Are there any other data to support the statements that Jividar's lands are not hereditary.

The papers of the case are forwarded herewith. You are requested to return them with your reply which may be submitted through the Revenue Department.

SD/- 9-1-4,

Remembrancer of Legal Affairs.

4 Copies 9-5-

Office of the R.L.A.

The main question involved in the appeal is whether the grant comprises land or merely land revenue. The view that it must have been the latter rests, inm in the Collector's Order under appeal as also inthe Commissioner's No.W.T.N. 1876,dated 29-9-35, mainly on three grounds (1) the Survey Tippans of 1854; (2) the absence of evidence showing resumption of the land at any time before Ramji Motiji and (3) the absence of evidence to show that the original assignment was of land itself. A brief consideration would show that the grounds are insufficient to reach the conclusion that the assignment was of land revenue only.

2. The terms "Mal" and"Maldhani" have been defined in Wilson's Glossary. "Mal" is property of any description but has been used for the public revenue derived from land or the revenue claimed by the Government from the produce of the cultivated lands, the wealth of the State. On the other hand "Maldhani" is defined as the possessor of property especially land. In the extract of rati book at page 189 of Collector's file Col. 4 is intended for "the name of the Maldhani or Khateder". Probably therefore the expression implied no more than that the expression "holder" would popularly connote, that is a person lawfully in possession of the land and entitled to receive the proceeds. It does not appear to have been part of the duty of the Survey Officers to ascertain whether the service inams were grants of revenue alone or the soil as well. "Maldhani" is therefore an ambigous term and would not necessarily connote the owner of the soil. As regards the other expression used in the tippans, namely, "Chakiria Nakru" Chakaria" according to Wilson is applied to "land held revenue - free, on condition of performing some office, or discharging some obligation, Service land". Now "revenue-free may mean free of assessment or in the alternative free of a rent and

this ambiguity is equally evident in term "Nakru" which came to be noticed in 13 Bom. 333. it is explained in the head-note of the report as held free of assessment" but later on in the statement of facts as "rent-free". Both the expression, in the Tippans "Maldhani" and "Chakaria Nakru" are thus inconclusive.

3. As regards the absence of evidence about resumption it has been pointed out by the Commissioner that though the Jividars are not hereditary village servants, in practice it frequently happens tha t the office and the land are continued from father to son or in the same family. Therefore the fact in this case that the land throu ht remained with the descendants of Kanji Becharaji and that there is no evidence of resumption at any time need not be conclusive.

4. In regard to the last ground onwhich the Order under appeal is based, it is true that there is no evidence about the original assignment. But again, no presumption ~~xxx~~ can be made that the grant was of one kind or the other. Such a presumption no longer exists even in regard to inams and Saranjams: in the case of Watan property it is inappropriate: Waman V. Hari, 44 Bom. 227 ; a fortiori it should not be made in the case of land which, as will be ~~xxxxxx~~ shown presently, in-watandari. Although there is no documentary evidence about the origin of the grant and no presumption may be made as stated above, the Commissioner has observed that the Jividars are such poorer class of people than the patils and their status could not have been very different from what it is today even in olden times. It is therefore difficult to consider that these people were owners of the land at the time of the grant and that Government only refrained from levying assessment inconsideration of their service.

5. This poverty of the Jividars from the above point of view, may be considered a decisive factor in this appeal. It is also important that the jividars in Gujarat are not a hereditary

/S. C.
4 Copies 9-5-

hereditary class and that they held land given for remuneration only so long as service is performed. This fact is evidenced in the present case as follows.- (a) No register of Jividars is maintained under Part X of the Watan Act; (b) The abstract of village form III at page 1/35 shows that the land is classed as police bin-watandari; (c) Col. 11 of the land AlienationRegister shows that the tenure is "so long as services are rendered to Government." If the alienation had been continuable hereditarily, it would have been shown as "hereditary under Bombay Act III of 1874", as in the case of Patilki service lands. The importance of the entry in the Land Alienation Register is that, since there is no sanad extent, the egister unlike the Survey tippans, furnished under section 53 of the Land Revenue Code an evidence of title Entries in the Mutation Register at p.195 and Village Form I at p. 1/19 all support calumn 11 of the land Alienation Register as regards the land being held on "service tenure".

6. In view of this character of the Jividars' office and lands there can be raised a presumption that the grant was of the land and would be resumable under the Resumption Rules.

7. The next point is about the Civil Suit of 1930. It is necessary here to refer to the file maintained in respect of that suit in the Legal Departmen t. Originally the only defendant to the suit was Ramji Motiji. Survey No. 142 which is the subject matter of this anpeal was described in the plaint as assigned to village servants. The Collector moved the Commissioner to obtain sanction of the Government to defend the suit stating that although Government was not made a party it had interest in the land onaccount of its tenure. The Commissioner then wrote to the Collector as follows.on 8-7-1931.

It appears from the papers that no enquiry has been made as to whether in the case of this service land the grant was of the soil or of the royal share of the revenue only; i.e. in case the village servant ceases to perform the service or alienates the land, whether the village servant or the

S.C. 4 copies

alience could be evicted or full assessment only could be levied. It should have been made clear now the interests of ~~the~~ Government in this case are affected." On 4-8-1931 the Collector replied to say that "in the case of this service land the grant was of the soil and not of the royal share of the revenue only (Copy of the Mamlatdar's and Assistnat Collector's report accompany). The land is to becontinued so long as the service is rendered to Government as shown in Column 11 of the extract of the land alienation register and hence land can be resumed whether village servant ceases to perform the service". Thereupon the R.L.A. directed the District Government Pleader to move the court to have the Government added as a co-defendant. The court joined Government as defendant No. 2 and amended the plaint.

8. The report of the Mamlatdar and the Assistant Collector referred to in the Collector's letter dated 4-8-1931 is unfortunately not in the legal Department file and it may have been forwarded to the District Government Pleaders. It is nevertheless clear that the revenue officers took a different view in 1931 from what they have done before the present appeal. That however, may not be very material. In the suit the only relief sought by the plaintiff was as easement of way over Survey No. 142 Both the defendants Ramji Motiji andGovernment contended that Government was the absolute owner of theproperty in question. In the judgment it is stated that as the plaintiff was claiming a right against the Government he would bound to prove a prescriptive enjoyment for a period of 60 years and the suit was decided on the finding that the plaintiff had ~~failed~~ to failed to establish the said enjoyment for 60 years.

S.C.
4 Copies 9-5-

7. It is clear from the proceedings that there was a conflict of interest between the co-defendants since otherwise the plaintiff's suit would have been decided in a wholl different way. The title to the land may thus be considered to have been a matter directly and substantially in issue between the co-defendants and the matter is therefore res-judicate between Ramji Motiji and the Governments' ~~xx xxxx~~ & See Mulla's commentary "res Judicate between codefendants" at page 63 of the Civil Procedure Code 11th Edition. The question is thus one of res judicate and not of estoppel as thought by the District Government Pleader.

10. Some doubt has been expressed as to the competency of the appeal on account of the fact that the appellant has no interest in its subject matter. It may however be observed that in view of the question involved in the appeal, the matter is clearly a revenue case, and no matter how or by when it is brought to the Tribunal's notice the Tribunal would be competent to deal with it in its revisional jurisdiction.

Remembrancer of Legal Affairs.

U.R. to BOMBAY Revenue Tribunal No. 4358 , dated 8-6-1945.

S.C
·4 Copies 9-5-

Office of the R.L.A.

The Tribunal has requested Government to put in a written statement showing cause "why the appeal should not be allowed, the order of the Collector cancelling the agreement and levying assessment at full rate ~~set~~ aside and, in view of thefact that the Collector has allowed the objectionable structures to stand, assessment levied under clause 3(ii) of the agreement read with G.R., R.D., No. 4846/33 dated 20th July 1936.

2. The non-agricultural No.9 of Ghatkopar is covered by an agreement in the old form C dated 10-4-1915. A total area of 355 square yards was permitted to be built upon thereunder. The total area of the plot was stated in the agreement to be 983 square yards but in a ~~recnt~~ recent review was found actually to be 910 square yards. The occupant was liable under the agreement to pay an annual assessment of Rs. 10/- only. The agreement was to remain in force for 50 years commencing fro 1904.

3. It was noticed in 1933 that the built up area amounted t 390 square yards, that is 35 square yards in excess of the sanctioned area and that there were certain unauthorised structures. On 25-1-1944 the Deputy Collector wrote to the present occupant-appellant as follows.-

> ..... You are informed that for the several breaches pointed out therein the agreement in respect of the plot in liable to be cancelled and the plot assessed at thecurrent rate. The unauthorised work carried out is also liable to be pulled down. Please therefore state why action should not be taken to cancel the agreement and to assessthe plot at the current rate and to order the removal of the unauthorised work."

On 24-6-1944 the appelant's architect replied as follows.-

> My client requests you to allow him to keep these structures during the period of the war and six months thereafter and undertakes to pull down the same after the period mentioned above,

It will be seen that nothing was said in this reply ut the cancellation of the agreement and assessment of at the current rate. The Deputy Collector therefore wrote again to the architect on 6-7-1944 to the following effect.-

> "I have to state that as unauthorised structures have been erected thereon the terms of the agreement have been violated and it is liable to be cancelled as already intimated to your clients. Please therefor e ask your clients to state why the agreement shouldnot be cancelled. The question of allowing your clients to keep the unauthorised structures during the period of the war will be considered on receipt ofyour reply to the above.

The appellant then forwarded a statement dated the 3rd August 1944 tothe following effect.-

> "I agree into a new agreement as desired by you on the understanding that the temporary unauthorised structure will be allowed till one year after the termination of war."

On 27-10-1944 the Collector passed the order under appeal cancelling the agreement with effect from 1-8-1944. levying assessment at the full rate from the same date and allowing the unauthorised structures to remain for the durationof the war and the year thereafter.

4. The principle applicable to the cancellation have been stated in para 5 of R.L.A.'s No.602 dated 20-1-1945. It is ture that clause 8 of the agreement empowers the Collector to remove or to get removed an unauthorised structure, Therefore a cancellation of the agreement merely on account of certain unauthorised structures may not be held to be a quite appropriate or legal order. There is however nothing in the law of Contracts to prevent the parties to a contract from agreeing to cancel it or to substitute a new contract in its place. In the Deputy Collector's letters of 25-1-1944 the appellant was specificall y asked to state about the cancellation of the existing agreement and fresh assessment at the current rate. The appellant's statement of 3-8-1944 is again clear that the agreed to enter into a new agreement" as desired by you". With a view therefore to substituting a fresh agreement levying assessment at the current rate, the Collector was perfectly competent to cancel the existing agreement. It may however be conceded that the Collector could not have given effect to the

cancellation from 1-8-1933. The agreement wouldstand cancelle on 27-10-1944. It was open to the Collector to allow the unauthorised structures to remain for the duration of war and on year thereafter, but after a valid termination of the agreemen of 10-4-1915 the assessment would be at the current rate.

5. The next qustion is about the levy of as essment prio to 27-10-1944. It may be conceded that while the agreement subsisted as considered above, till 27-10-1944. any order abou assessment must be supported either by the Land Revenue Code an Rules or by any express term of the contract. In the present case, since the Collector has permitted the prohibited appropri tion, proviso (ii) to clause 3 of the agreement may perhaps be applied, the appellant being thus liable "to pay from the date of the appropriation in respect of the land so appropriated su enhanced assessment not exceeding Rs. 12 per 100 square yards as the Collector may deem fit to impose." The proviso may be read with .R.,R.D.,No. 4846/33 dated 20-7-1936 and the assessment till the date of the Collector's order may h accordingly.

Sd/- 11-12-45
Remembrancer of Legal Affairs

U.R. to R.D. No. 9288 , dated the 11th December 1945.

S.C.
4 Copies 9-5-